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*Attorneys for Plaintiffs and Counterclaim Defendants Capana Swiss Advisors AG
and AmeriMark Automotive AG*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK
AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**DECLARATION OF MARTIN FASSER
HEEG IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL DEPOSITION
OF NICOLAI COLSHORN**

Case No. 2:23-cv-00467

Judge: Hon. Ted Stewart

Magistrate Judge: Hon. Cecilia M. Romero

DECLARATION OF MARTIN FASSER HEEG

I, Martin Fasser Heeg, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts set forth herein.

If called as a witness, I could and would competently testify to the matters stated herein.

2. I am the corporate representative of Plaintiff AmeriMark Automotive AG (“AmeriMark”) in this action.

3. Nicolai Colshorn (“Colshorn”) served as an executive of AmeriMark for approximately eight years, since 2016. From 2016 until August 2020 Colshorn served as a member of the board of directors while Defendant Nicholas Markosian served as President of the Board of Directors, the senior executive of the company.

4. February 2023, Mr. Colshorn was the President of the Board with single signature authority, i.e.: the senior executive of AmeriMark.

5. In February 2023, Mr. Colshorn began relinquishing his responsibilities at AmeriMark.

6. In February of 2023 I joined AmeriMark, taking over the senior executive role of President of the Board in February of 2023. Mr. Colshorn took a junior and inactive role as a member of the board of directors.

7. During my tenure I had very limited contact with Mr. Colshorn and performed essentially all the executive corporate functions of the company, even before Mr. Colshorn’s formal departure in June of 2024.

8. Around 3:00 in the afternoon of June 27, 2024 AmeriMark's legal counsel Felix Kappeler informed me by telephone that Mr. Colshorn had resigned from AmeriMark with immediate effect.

9. Under Swiss law, a company must recognize the resignation of an officer or member of the board of directors from the time the company is notified of the resignation (in writing or otherwise).

10. Accordingly, I was sole executive and member of the board of AmeriMark no later than the afternoon of June 27, 2024 Central European Summer Time.

11. The application for the changes to the Zug commercial register removing Colshorn dated June 28, 2024 was signed by me, and Mr. Colshorn's signed letter of resignation dated June 28, 2024, which was attached to the commercial register application, is attached as Exhibit A to ECF No. 174-3.

12. Formal applications to any commercial register in Switzerland are implicitly made under oath. Accordingly, false statements to the commercial register of Zug are a criminal offense in Switzerland under Article 153 of the Swiss Criminal Code and punishable by a custodial sentence of up to three years.

13. Information concerning changes in corporate structures for Swiss corporations is public and can be found at <https://zg.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-100.954.940>. A true and correct copy of the information found at the above-listed website as of November 21, 2024, is attached hereto as **Exhibit 1**.

14. No one at AmeriMark forced, pushed, or otherwise encouraged Mr. Colshorn to retire. To the contrary, Plaintiffs wanted to retain him.

15. The current directors, officers, and employees of AmeriMark no longer communicate with Mr. Colshorn.

16. Mr. Colshorn has no residual authority over AmeriMark's affairs and has had no involvement with AmeriMark since his retirement.

17. I am informed and believe that Mr. Colshorn has indicated he will not agree to be deposed in the United States.

18. I do not believe that Mr. Colshorn will agree to be deposed, even with knowledge that Plaintiffs may be subject to sanctions if he does not appear.

19. Mr. Colshorn has his own counsel. AmeriMark's legal counsel informed me that contact information for Mr. Colshorn's counsel has been provided to Defendants. A true and correct copy of the email containing the contact information for Mr. Colshorn's counsel, which was sent to counsel for Defendants, is attached hereto as **Exhibit 2**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 26, 2024 at Salt Lake City, Utah.

/s/ Martin Fasser Heeg
Martin Fasser Heeg

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 2024, I caused a true and correct copy of the foregoing **DECLARATION OF MARTIN FASSER HEEG IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DEPOSITION OF NICOLAI COLSHORN** to be filed on the Court's CM/ECF platform, which sent notice to all counsel of record.

/s/ Hannah Ector

Hannah Ector

EXHIBIT 1

Company No. CHE-100.954.940	Legal form Limited or Corporation	Registered 17.09.1998	Struck off	Transfer CH-320.4.045.116-0 from: to:	1
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All data

Ent	Ca	Registered name	Ref	Registered office
0		AmeriMark Automotive AG	0	Herisau
0		(AmeriMark Automotive Ltd.) (AmeriMark Automotive SA)	1	Zug

Ent	Ca	Share capital	Paid-in	Denomination of shares	Ent	Ca	Registered address
0		CHF 900'000.00	CHF 900'000.00	18'000'000 Namenaktien zu CHF 0.05	0	1	Die Gesellschaft hat ihr Domizil eingebüsst
					1	4	Steinhauserstrasse 74 6301 Zug
					4		c/o Martina Plüss Chamerstrasse 63 6300 Zug

Ent	Ca	Purpose	Ent	Ca	Additional addresses
0		Die Gesellschaft bezweckt den Erwerb, die dauernde Verwaltung und die Veräusserung von Beteiligungen an in- und ausländischen Unternehmen aller Art in den Bereichen Automobilindustrie/Fahrzeuge/Fortbewegungsmittel aller Art. Die Gesellschaft kann Zweigniederlassungen und Tochtergesellschaften im In- und Ausland errichten und sich an anderen Unternehmen im In- und Ausland beteiligen sowie alle Geschäfte tätigen, die direkt oder indirekt mit ihrem Zweck in Zusammenhang stehen. Die Gesellschaft kann im In- und Ausland Grundeigentum erwerben, belasten, veräussern und verwalten. Sie kann auch Finanzierungen für eigene oder fremde Rechnung vornehmen sowie Garantien und Bürgschaften für Tochtergesellschaften und Dritte eingehen.			

Ent	Ca	Remarks	Ref	Date of the articles of association
0		Mitteilungen an die Namenaktionäre erfolgen nach Ermessen des Verwaltungsrates per Brief, E-Mail oder Telefax an die im Aktienbuch verzeichneten Adressen, solch an die Inhaberaktionäre durch Publikation im SHAB.	0	15.09.1998
0		Die Gesellschaft hat mit Erklärung vom 06.06.2016 auf die eingeschränkte Revision verzichtet.	0	02.06.2016
			0	08.06.2016
			0	02.12.2016
			0	24.04.2017
			0	18.10.2018
			1	05.04.2022

Ent	Ca	Particular events	Ref	Official publication medium
0		Umwandlung: Die Gesellschaft mit beschränkter Haftung hat das Stammkapital mittels sacheinlageweiser Übernahme von Aktien gemäss näherer Umschreibung im Vertrag vom 06.06.2016 auf CHF 900'000.00 erhöht und wird gemäss Umwandlungsplan vom 06.06.2016 und Bilanz per 31.05.2016 mit Aktiven von CHF 0.00 und Passiven (Fremdkapital) von CHF 0.00 in eine Aktiengesellschaft umgewandelt. Die Überschuldung und der Kapitalverlust wurden anlässlich der Kapitalerhöhung vom 06.06.2016 beseitigt. Die Gesellschafter erhalten für ihre bisherigen Stammanteile 18'000'000 Aktien zu CHF 0.05.	0	SHAB
			1	SHAB

Ref	Journal No.	Journal date	SOGC	SOGC date	Page / Id	Ref	Journal No.	Journal date	SOGC	SOGC date	Page / Id
0	(Transfer seat)			(Transfer seat)		3	12330	19.07.2024	142	24.07.2024	1006092600
1	6978	11.05.2022	94	16.05.2022	1005474228	4	12603	25.07.2024	146	30.07.2024	1006096883
2	3188	24.02.2023	42	01.03.2023	1005690077						

Ent	Mo	Ca	Personal details	Role	Signing authority
0		2m	Golshorn, Nicolai Helmut Carl Hermann Claus, deutscher Staatsangehöriger, in Baar	member of the board	individual signing authority
2		3m	Fasser Heeg, Martin, von Val Müstair, in Zollikon	chairperson of the board	joint signing authority (any two to sign)
2		3	Golshorn, Nicolai Helmut Carl Hermann Claus, deutscher Staatsangehöriger, in Baar	member of the board	joint signing authority (any two to sign)
3			Fasser Heeg, Martin, von Val Müstair, in Zollikon	member of the board	individual signing authority

CHE-100.954.940	AmeriMark Automotive AG	Zug	2
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All data

Zug, 21.11.2024 12:17

The information above is given with not commitment and is in no way legally binding.

List of abbreviations	
Ent	Entry reference number
Mo	Modification reference number
Ca	Cancellation reference number
Journal date	Daily register entry date
SOGC	Swiss Official Gazette of Commerce
Ref	Reference number
Journal No.	Daily register number
Journal date	Daily register entry date

EXHIBIT 2

From: [Diamond, Sarah E.](#)
To: [Chad Pehrson](#); [Erik A. Christiansen](#)
Cc: [Robert Harrington](#); [Stephen Richards](#); [Gallagher, Zoe](#); [Julie Emery](#); [Madison Tremblay](#); [Worden, John S.](#)
Subject: RE: Parking Instructions for Deposition of Nicolai Colshorn
Date: Thursday, August 1, 2024 1:02:58 PM
Attachments: [image001.png](#)

Chad:

As we have previously stated in prior correspondence, Mr. Colshorn retired on June 28, 2024 and is no longer a director of AmeriMark Automotive AG. We do not represent him and are not authorized to accept service on his behalf. You can contact Mr. Colshorn's attorney directly. We have provided the contact information of Mr. Colshorn's attorney for the second time below:

Manuel Bucher
Gabriel & Bucher AG
Rechtsanwalt und Notar
Bahnhofplatz 5
CH-6061 Sarnen, Switzerland
+41 41 666 30 60
manuel.bucher@gabriel-bucher.ch

Best,
Sarah

[Sarah E. Diamond, Esq. | Venable LLP](#)
t 310.229.0321 | f 310.229.9901
2049 Century Park East, Suite 2300, Los Angeles, CA 90067

SEDiamond@Venable.com | www.Venable.com

From: Chad Pehrson <cpehrson@kba.law>
Sent: Thursday, August 1, 2024 10:30 AM
To: Diamond, Sarah E. <SEDiamond@Venable.com>; Erik A. Christiansen <EChristiansen@parsonsbehle.com>
Cc: Robert Harrington <rharrington@kba.law>; Stephen Richards <srichards@kba.law>; Gallagher, Zoe <ZGallagher@Venable.com>; Julie Emery <JEmery@parsonsbehle.com>; Madison Tremblay <MTremblay@parsonsbehle.com>
Subject: Parking Instructions for Deposition of Nicolai Colshorn

Caution: External Email

Sarah, Erik,

Regarding Mr. Colshorn's deposition on August 6, here's some guidance on parking logistics

at KBA:

We are in the Broadway Media building. Address is 50 W. 300 South, Ste 1000 (10th floor).

You have two parking options. To park inside, we validate for the American Plaza parking structure that is directly east of our building. You will get a ticket on the way in, and we can give you validations cards for that as you leave. If you prefer to park outside, you can park in the outdoor lot behind Ruth Chris Steakhouse on the corner of Broadway and West Temple. There is hut in the parking lot that you need to get a ticket from and inform him you are coming to floor 10. We have validation stickers for that card when you come in.

<https://kba.law/contact/>

Best Regards,



CHAD S. PEHRSON

Partner

Salt Lake: 801.939.3698 San Diego: 619-371-5511

“Perfection is achieved, not when there is nothing more to add, but when there is nothing left to take away.” Antoine de Saint-Exupéry, *Airman's Odyssey*